6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0642; FRL-10014-86-Region 8]

Air Quality State Implementation Plans; Approval and Promulgation of Implementation Plans; South Dakota; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Revisions to Administrative Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of South Dakota's January 15, 2020, State Implementation Plan (SIP) submission that addresses infrastructure requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). Additionally, in this action, we are approving a SIP revision submitted by the State of South Dakota on January 3, 2020, that revises the Administrative Rules of South Dakota (ARSD), Air Pollution Control Program, updating the date of incorporation by reference of federal rules in ARSD chapters pertaining to definitions, ambient air quality, air quality episodes, Prevention of Significant Deterioration (PSD), new source review, performance testing, control of visible emissions, continuous emission monitoring systems, State facilities in Rapid City area, construction permits and regional haze program administrative rules. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2019-0642. All documents in the docket are listed on the http://www.regulations.gov

website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through http://www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, telephone number: (303) 312-6175, email address: *gregory.kate@epa.gov.* Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means the EPA.

I. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). More recently, on October 1, 2015, the EPA promulgated and revised the NAAQS for ozone, further strengthening the primary and secondary 8-hour standards to 0.070 ppm (80 FR 65292). The October 1, 2015 standards are known as the 2015 ozone NAAQS.

Section 110(a)(1) of the CAA directs each state to make an infrastructure SIP submission to the EPA within 3 years of promulgation of a new or revised NAAQS. Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a state's infrastructure SIP submission must address, as applicable. The state's infrastructure SIP submission must establish that the state's existing

SIP meets the applicable requirements or make revisions to satisfy those requirements as necessary. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPRM) published on May 19, 2020 (85 FR 29882) for South Dakota's infrastructure SIP submission, submitted to the EPA on January 15, 2020, and SIP revisions to the ARSD submitted to the EPA on January 3, 2020.

II. Response to Comments

Comments on our NPRM were due on or before June 18, 2020. The EPA received four comments. The first comment was supportive of the proposed action. We summarize and respond to all other significant adverse comments below.

Comments: One commenter contends that our May 19, 2020 South Dakota infrastructure SIP NPRM is a "blatantly illegal rule" which should be retracted and disapproved because the EPA has ignored "the courts," specifically the May 19, 2020 decision of the D.C. Circuit Court of Appeals in *Maryland v. EPA*.[1] The commenter contests the EPA's use of 2023 as the analytic year for evaluation of South Dakota's "Good Neighbor" obligations for the 2015 ozone NAAQS,[2] which the agency based on its interpretation of the relevant holding in *Wisconsin v. EPA* regarding the appropriate timeframes for analysis and implementation of Good Neighbor obligations.[3] Commenter maintains that the 2021 Marginal attainment year for the 2015 ozone NAAQS is the correct analytical year per the *Maryland* decision.

Similarly, another commenter alleges that EPA cannot approve the South Dakota infrastructure SIP submission "as it relates to the good neighbor provision because it relies on the flawed modeling," and thus the EPA should disapprove it because the State relied on the wrong

[1] *Maryland v. EPA*, 958 F.3d 1185 (D.C. Cir. 2020).
[2] CAA section 110(a)(2)(D)(i)(I) is colloquially referred to as the "Good Neighbor" provision.
[3] *Wisconsin v. EPA*, 938 F.3d 303, 313-320 (D.C. Cir. 2019).

analysis. The commenter asserts that, "courts have opined several times that 2023 is the improper year to evaluate for downwind contributions" and the EPA must disapprove South Dakota's SIP submission due to 2021 being the correct analytical year to evaluate for Good Neighbor downwind contributions.

The commenter further argues that the Good Neighbor provision require states to perform the modeling analysis themselves, and thus because the EPA cannot perform the analysis for the State, that the EPA consequently cannot supplement South Dakota's infrastructure SIP submission with "new manufactured" modeling to support approval of the proposal. The commenter also asserts that if the EPA were to "fix" the modeling for the State, EPA must then disapprove the State's infrastructure SIP submission and promulgate a Federal Implementation Plan (FIP).

Response: The commenters are referring to recent D.C. Circuit court decisions addressing, in part, the issue of the relevant analytic year for the purposes of evaluating interstate ozone transport under the Good Neighbor provision, CAA section 110(a)(2)(D)(i)(I). On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin v. EPA*, remanding the Cross-State Air Pollution Rule ("CSAPR") Update[4] to the extent that Good Neighbor FIPs in the CSAPR Update did not fully eliminate upwind states' "significant contribution" by the next applicable attainment date[5] by which downwind states must attain the 2008 ozone NAAQS. *See* 938 F.3d at 313. The EPA had interpreted that holding as limited to the attainment dates for Moderate or higher classifications under CAA section 181 on the basis that Marginal

[4] 81 FR 74504 (October 26, 2016).
[5] *See* CAA 181(a); 40 CFR 51.1303.

nonattainment areas have reduced planning requirements and other considerations. *See, e.g.,* 85 FR 29882, 29888-89 (May 19, 2020).

On May 19, 2020, the D.C. Circuit in *Maryland v. EPA*, applying the *Wisconsin* decision, held that the EPA must assess the impacts of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for EPA's denial of a petition under CAA section 126(b). 958 F.3d at 1203-04. The EPA signed the NPRM proposing approval of South Dakota's Good Neighbor SIP prior to the D.C. Circuit's decision in *Maryland*. In accordance with the *Maryland* decision, the Agency now, in taking this final action approving the South Dakota SIP, considers the Marginal area attainment date[6] as the relevant analytic year for the purposes of determining whether sources in South Dakota will significantly contribute to downwind nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other states.[7]

EPA disagrees with the commenters' assertion that this change in analysis means EPA must disapprove South Dakota's infrastructure SIP submission as it pertains to the Good Neighbor provision. As an initial matter, in regard to the comment that South Dakota must conduct its own air quality analysis, EPA has authority and indeed an obligation to take into consideration any relevant information in the record, including its own air quality modeling analysis, to determine how to act on a SIP submission. Here, the State had concluded in its

---

[6] The attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS is August 3, 2021. *See* CAA 181(a); 40 CFR 51.1303; 83 FR 25776 (June 4, 2018).

[7] We note that the court in *Maryland* did not have occasion to evaluate circumstances in which EPA may determine that an upwind linkage to a downwind air quality problem exists at steps 1 and 2 of the four-step Good Neighbor framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See* 938 F.3d at 319-320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant a certain degree of flexibility in effectuating the implementation of the Good Neighbor provision. *Id*. Such circumstances are not at issue in the present action.

infrastructure SIP submission that it has no emissions reduction obligations for purposes of section 110(a)(2)(D)(i)(I), on the basis that its emissions are not linked to any nonattainment or maintenance receptors, remains approvable. Specifically, relying in part on the same data that informed its analysis of the year 2023, the EPA finds it reasonable to conclude that the impacts from emissions from South Dakota will not exceed a contribution threshold of 1 percent of the 2015 ozone NAAQS to any downwind nonattainment and maintenance sites in 2021. This finding is sufficient basis for EPA to conclude that South Dakota is not linked to any downwind receptors at step 2 of the four-step interstate transport framework.[8]

South Dakota's January 15, 2020 infrastructure SIP submission includes an interstate ozone transport analysis for the Good Neighbor provision that focused on the modeling information provided in the EPA's March 2018 memorandum,[9] which used 2023 as the analytic year (corresponding with the 2024 Moderate area attainment date).[10] Based on the contribution modeling included in the March 2018 memorandum, the EPA concludes that South Dakota's largest impact on any downwind nonattainment or maintenance receptors in 2023 are 0.07 parts

[8] Thus, it is not necessary for the EPA to proceed to evaluate whether the state's infrastructure SIP submission may also be approvable using an alternative contribution threshold of 1 ppb. The EPA released a memorandum in August 2018 which indicates that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution capture using a 1 ppb threshold is generally comparable, overall, to the amount captured using a threshold equivalent to 1 percent of the 2015 ozone NAAQS. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the 1 percent threshold, at step 2 of the four-step Good Neighbor framework in developing their SIP revisions addressing the Good Neighbor provision for the 2015 ozone NAAQS. *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018, available in the docket for this action or at https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.

[9] Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at https://www.epa.gov/interstate-air-pollution-transport/memos-and-notices-regarding-interstate-air-pollution-transport.

[10] The year 2023 was used as the analytic year because that year aligns with the expected attainment year for Moderate ozone nonattainment areas. The attainment date for nonattainment areas classified as Moderate for the 2015 ozone NAAQS is August 3, 2024. *See* CAA 181(a); 40 CFR 51.1303; 83 FR 25776 (June 4, 2018).

per billion (ppb) and 0.05 ppb, respectively.[11] These values are both far less than 1 percent of the 2015 ozone NAAQS (0.70 ppb). In response to these comments and the *Maryland* decision, using the best available information (including the same data that informed EPA's 2023 modeling) to analyze South Dakota's air quality impacts in the year 2021, the EPA finds it reasonable to conclude that South Dakota's impact on any potential downwind nonattainment and maintenance receptor in 2021 would be similar to those projected in 2023, and likewise well below 1 percent of the 2015 ozone NAAQS, as detailed in the methodology described below. Therefore, EPA finds that South Dakota's infrastructure SIP submission satisfies the State's Good Neighbor obligations for the 2015 ozone NAAQS.

The EPA's analysis of receptors and contributions in 2021 relies in part on the 2023 modeling used in the NPRM of this action, the results of which were included with the March 2018 memorandum. These data are the most recent published applicable modeling data available at the time of this final action. To estimate South Dakota's maximum contribution to a nonattainment or maintenance receptor in 2021, EPA developed an interpolation analysis that evaluates available modeling, monitoring, and emissions data to assess air quality in this year. In general, this analysis utilizes 2019 measured design values[12] and 2023 modeled design values to estimate design values at each monitoring site in 2021. Specifically, 2021 average and maximum design values were calculated by straight-line linear interpolation between the 2019 measured

---

[11] The EPA's analysis indicates that South Dakota will have a 0.07 ppb impact at the nonattainment receptor in Tarrant County, Texas (Site ID 484392003), which has a 2023 projected average design value of 72.5 ppb, and a 2023 projected maximum design value of 74.8 ppb. The EPA's analysis further indicates that South Dakota will have a 0.05 ppb impact at the maintenance receptors in Allegan, Michigan (Site ID 260050003) and Queens, New York (Site ID 360810124), which both had projected 2023 average design values below the 2015 ozone NAAQS (69.0 and 70.2 ppb, respectively), and 2023 projected maximum design values above the NAAQS (71.7 and 72.0 ppb, respectively). See the March 2018 memorandum, attachment C.

[12] The 2019 design values at each monitoring site nationwide are available at https://www.epa.gov/air-trends/air-quality-design-values.

data and the 2023 modeled data. EPA believes that the linear interpolation methodology using measured data and 2023 model projections provides a technically sound basis for estimation of ozone design values in 2021 in part because of the relatively short two-year span between 2021 and 2023.

EPA calculated ozone contributions in 2021 by applying the following two-step process. First, the contributions (in ppb) from each state to each monitoring site in 2023 were converted to a fractional portion of the 2023 average design value by dividing the contribution by the 2023 design value. In the second step, the resulting contribution fractions were multiplied by the estimated 2021 average design value to produce 2021 contributions from each state to each monitoring site.[13,14]

The 2021 design values and contributions were examined to determine if South Dakota contributes at or above the 1 percent of the 2015 ozone NAAQS threshold (0.70 ppb) to a downwind nonattainment or maintenance receptor. The data indicate that the highest contribution in 2021 from South Dakota to a downwind receptor is 0.14 ppb to the nonattainment receptor site in Cook County, Illinois.[15] Based on this analysis, EPA finds it reasonable to conclude that South Dakota will contribute less than 1 percent of the 2015 ozone NAAQS to any potential nonattainment or maintenance receptors in 2021.

EPA also analyzed ozone precursor emissions trends in South Dakota to support the findings from the air quality analysis. In evaluating emissions trends, we focused on State-wide

---

[13] Note that the method used here for calculating contributions in 2021 is similar to the method used by EPA to calculate the 2023 contributions from 2023 air quality modeling.
[14] Design values for 2019, 2021, and 2023 along with the contributions in 2021 and 2023 are provided in a file in the docket for this rule.
[15] This downwind receptor site has Air Quality System (AQS) monitoring ID #170310001 and is located in Cook County, Illinois.

emissions of nitrogen oxides ("NO_X") and volatile organic compounds ("VOCs") in South Dakota.[16, 17] Emissions from mobile sources, electric generating units ("EGUs"), industrial facilities, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. This evaluation looks at both past emissions trends, as well as projected trends.

As shown in Table 1, between 2011 and 2017, annual total NO_X and VOC emissions have declined, by 32 percent and 9 percent, respectively. The projected reductions are a result of "on the books" and "on the way" regulations that will continue to decrease NO_X and VOC emissions in South Dakota, as indicated by our 2023 projected emissions. The large decrease in NO_X emissions between 2017 emissions and projected 2023 emissions in South Dakota are primarily driven by reductions in emissions from on-road and nonroad vehicles. EPA projects that the downward trend in both VOC and NO_X emissions from 2011 through 2017 is expected to continue at a steady rate out to 2023 and further into the future due to the replacement of higher emissions vehicles with lower emitting vehicles as a result of several mobile source control programs.[18] This downward trend in emissions in South Dakota adds support to the air quality analysis presented above, which indicates that the contributions from emissions from sources in South Dakota to ozone in downwind states will continue to decline and remain below 1 percent of the NAAQS.

Table 1: Annual Emissions of NO_X and VOC from Anthropogenic Emission Sources in South Dakota (tons)

---

[16] This is because ground-level ozone is not emitted directly into the air but is a secondary air pollutant created by chemical reactions between ozone precursors, chiefly NO_X and non-methane VOCs, in the presence of sunlight.
[17] 81 FR 74504, 74513-14.
[18] Tier 3 Standards (March 2014), the Light-Duty Greenhouse Gas Rule (March 2013), Heavy (and Medium)-Duty Greenhouse Gas Rule (August 2011), the Renewable Fuel Standard (February 2010), the Light Duty Greenhouse Gas Rule (April 2010), the Corporate-Average Fuel Economy standards for 2008-2011 (April 2010), the 2007 Onroad Heavy-Duty Rule (February 2009), and the Final Mobile Source Air Toxics Rule (MSAT2) (February 2007).

	2011	2012	2013	2014	2015	2016	2017	Projected 2023
NO_X	73,995	71,438	68,881	66,323	56,548	52,664	50,590	34,096
VOC	66,430	64,229	62,028	59,826	58,873	57,627	56,528	51,313

Thus, the EPA concludes the air quality and emission analyses indicate that emissions from South Dakota will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state in 2021. Therefore, EPA concludes that South Dakota's infrastructure SIP submission satisfies the State's Good Neighbor obligations for the 2015 ozone NAAQS.

Comment: One commenter asserts that the EPA should not approve South Dakota's infrastructure SIP submission with respect to PSD requirements because the Agency isn't required to do so under current rules. The commenter seems to allege that South Dakota's PSD program is under consideration at the time of the proposed action and there will be legal challenges regarding the approval of construction permits. Additionally, the commenter alleges that the EPA should 'evaluate the strength of the S.D. permit program and its financial health.'

Response: The EPA disagrees with the commenter. The commenters' concerns appear to be directed not to whether the existing SIP for South Dakota meets the relevant structural requirements for PSD programs, but rather to whether South Dakota is in fact faithfully implementing the existing provisions of its EPA-approved SIP. As the EPA has explained in other infrastructure SIP actions, comments like these highlight an important distinction between whether an infrastructure SIP submission meets the applicable requirements of the CAA on its face (*i.e.,* pertain to the facial sufficiency of the state's SIP), and whether a state is actually complying with the requirements of that SIP (*i.e.,* pertain to adequacy of the state's

implementation of the SIP).[19] This comment implicates the question of the degree to which implementation concerns are relevant in the context of acting on a state's infrastructure SIP submission. In the context of an infrastructure SIP submission, the EPA interprets the requirements of section 110(a)(1) and (2) to require the Agency to focus on whether the state has a SIP that provides the requisite legal framework for implementation, maintenance and enforcement of the NAAQS. Generally speaking, the EPA's review of infrastructure SIP submissions is limited to whether, pursuant to CAA section 110(a)(2), the submission facially meets the requirements of the statutory criteria outlined therein, as applicable. In the case of section 110(a)(2)(C), for example, the statute requires a state to have a SIP that "include[s] a program to provide for . . . regulation of the modification and construction of any stationary sources . . . including a permit program as required in parts C and D of this subchapter." Thus, the EPA reviews a state's infrastructure SIP submission to assure that the structural elements of the state's PSD permitting program meets current CAA requirements for such programs.

This is not to say that the EPA has no role in reviewing whether a state is faithfully implementing its approved SIP, or otherwise complying with the CAA and its implementing regulations. To the contrary, there are multiple statutory tools that the EPA can use to rectify problems with a state's implementation of its SIP, and the existence of these tools is consistent with the EPA's interpretation of section 110(a)(2) with respect to the Agency's role in reviewing infrastructure SIP submissions. For example, the CAA provides the EPA the authority to issue a SIP call, 42 U.S.C. 7410(k)(5); make a finding of failure to implement, *id.* sections 7410(m), 7509(a)(4); and take measures to address specific permits pursuant to the EPA's case-by-case

[19] See "Approval and Disapproval and Promulgation of Implementation Plans; Texas; Infrastructure and Interstate Transport Requirements of the 1997 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS," 76 FR 81371 (Dec. 28, 2011).

permitting oversight. *See, e.g.,* sections 7475(a)(2); 7477. The appropriateness of employing these authorities depends on the nature and extent of the particular implementation problems at issue.

With respect to South Dakota's infrastructure SIP submission, the EPA analyzed the submission itself, and evaluated the text of its provisions for compliance with the relevant elements of section 110(a)(2). The EPA has evaluated the State's submission on a requirement-by-requirement basis and explained its views on the adequacy of the State's SIP for purposes of meeting the infrastructure SIP requirements.

The EPA appreciates and takes seriously the commenters' assertions that the Agency should evaluate the strength of the South Dakota permit program in the SIP as approved by the EPA. However, because this action involves a review of the infrastructure SIP submission itself, the EPA is not evaluating the merits of assertions concerning implementation of the SIP in the context of this action. At this time, the EPA is finalizing its proposed approval of the infrastructure SIP submission that is currently before the Agency. If the EPA later determines that there are indeed concerns with respect to the implementation of the PSD program in South Dakota, the Agency intends to take appropriate action to ensure those problems are rectified using whatever statutory tools are appropriate to the implementation problem identified.

With respect to the requirements related to PSD relevant to this approval of the infrastructure SIP submission, the EPA has determined that the State's SIP as previously approved, meets the relevant structural requirements for purposes of PSD in section 110(a)(2)(C), (D)(i)(II) element 3, and (J). Some examples of these basic structural SIP requirements include having state law authority to implement the SIP, an overarching permitting program in place, and a properly deployed monitoring network. As to the PSD program in

particular, these basic structural requirements include those provisions necessary for the permitting program to address all regulated NSR pollutants and the proper sources. The EPA considers action on the infrastructure SIP submissions required by section 110(a)(1) and (2) to be an evaluation of a state's SIP to assure that it meets the basic structural requirements for the new or revised NAAQS, not a time to address all potential substantive defects in existing SIP provisions, or alleged defects in implementation of the SIP.

The EPA concludes that South Dakota's infrastructure SIP submission satisfies the State's obligations for the 2015 ozone NAAQS with respect to PSD program requirements.

III. Final Action

In this rulemaking, we are approving multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for South Dakota along with approving revisions to the ARSD, Air Pollution Control Program. The actions we are approving are contained in Table 1 below.

The EPA is approving South Dakota's January 15, 2020 SIP submission that addresses infrastructure requirements for the 2015 ozone NAAQS SIP submission for the following CAA section 110(a)(2) infrastructure elements: (A), (B), (C), (D)(i)(I) Prongs 1 and 2, (D)(i)(II) Prong 3, (D)(i)(II) Prong 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Additionally, in this action, we are approving a SIP revision submitted by the State of South Dakota on January 3, 2020 that revises the ARSD, Air Pollution Control Program.

TABLE 2: INFRASTRUCTURE ELEMENTS THAT THE EPA IS PROPOSING TO ACT ON

In the table below, the key is as follows:

A - *Approve*.

D - *Disapprove*.

NA - *No Action.*

2015 Ozone NAAQS Infrastructure SIP Elements: South Dakota	
(A): Emission Limits and Other Control Measures	A
(B): Ambient Air Quality Monitoring/Data System	A
(C): Program for Enforcement of Control Measures	A
(D)(i)(I): Prong 1 Interstate Transport - significant contribution	A
(D)(i)(I): Prong 2 Interstate Transport - interference with maintenance	A
(D)(i)(II): Prong 3 Interstate Transport - prevention of significant deterioration	A
(D)(i)(II): Prong 4 Interstate Transport – visibility	A
(D)(ii): Interstate and International Pollution Abatement	A
(E): Adequate Resources	A
(F): Stationary Source Monitoring System	A
(G): Emergency Episodes	A
(H): Future SIP revisions	A
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection	A
(K): Air Quality and Modeling/Data	A
(L): Permitting Fees	A
(M): Consultation/Participation by Affected Local Entities	A
South Dakota ARSD; revisions to South Dakota's Air Quality Program; chapters pertaining to definitions, ambient air quality, air quality episodes, PSD, new source review, performance testing, control of visible emissions, continuous emission monitoring	A

systems, state facilities in Rapid City area, construction permits and regional haze program administrative rules.	

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of a SIP revision submitted by the State of South Dakota on January 3, 2020 that revises the ARSD, Air Pollution Control Program, updating the date of incorporation by reference of federal rules in ARSD chapters pertaining to definitions, ambient air quality, air quality episodes, PSD, new source review, performance testing, control of visible emissions, continuous emission monitoring systems, State facilities in Rapid City area, construction permits and regional haze program administrative rules as is described in the preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[20]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

[20] 62 FR 27968 (May 22, 1997).

40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: _September 23, 2020.

_____
Debra Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52–APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq*.

Subpart QQ–South Dakota

2. In §52.2170:

a. The table in paragraph (c) is amended by:

i. Revising the entries "74:36:01:01", "74:36:01:05", "74:36:01:19", "74:36:01:20", "74:36:02:02", "74:36:02:03", "74:36:02:04", "74:36:02:05", "74:36:03:01", "74:36:03:02", "74:36:09:02", "74:36:09:03", "74:36:10:02", "74:36:10:03.01", "74:36:10:05", "74:36:10:07", "74:36:10:08", "74:36:11:01", "74:36:11:02", "74:36:11:03", "74:36:11:04", "74:36:12:01", "74:36:12:03", "74:36:13:02", "74:36:13:03", "74:36:13:04", "74:36:13:06", "74:36:13:07", "74:36:18:10", "74:36:20:05", "74:36:21:02", "74:36:21:04", "74:36:21:05", and "74:36:21:09" and

ii. Adding an entry for "74:36:21:13" in numerical order; and

b. The table in paragraph (e) is amended by adding an entry for "XXVI. Section 110(a)(2) Infrastructure Requirements for the 2015 8-hour Ozone NAAQS" at the end of the table.

The revisions and additions read as follows:

§52.2170 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
* * * * * * *					
74:36:01. Definitions					
74:36:01:01	Definitions	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
* * * * * * *					
74:36:01:05	Applicable requirements of the Clean Air Act defined	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
* * * * * * *					
74:36:01:19	Existing municipal solid waste landfill defined	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
74:36:01:20	Physical change in or change in the method of	11/25/2019	**[insert date 30 days after date of**	**[insert Federal Register citation]**, **[insert**	

	operation defined		**publication in the Federal Register]**	**date of publication in the Federal Register]**	
* * * * * * *					
74:36:02. Ambient Air Quality					
* * * * * * *					
74:36:02:02	Ambient air quality standards	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
74:36:02:03	Methods of sampling and analysis	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
74:36:02:04	Ambient air monitoring network	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
74:36:02:05	Air quality monitoring requirements	11/25/2019	**[insert date 30 days after**	**[insert Federal Register citation]**,	

			date of publication in the Federal Register]	**[insert date of publication in the Federal Register]**	
74:36:03. Air Quality Episodes					
74:36:03:01	Air pollution emergency episode	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:03:02	Episode emergency contingency plan	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
* * * * * * *					
74:36:09. Prevention of Significant Deterioration					
* * * * * * *					
74:36:09:02	Prevention of Significant Deterioration	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	

74:36:09:03	Public participation	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:10. New Source Review					
* * * * * * *					
74:36:10:02	Definitions	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:10:03.01	New source review preconstruction permit required	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:10:05	New source review preconstruction permit required	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	

* * * * * * *					
74:36:10:07	Determining credit for emissions Offsets	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:10:08	Projected actual emissions	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
* * * * * * *					
74:36:11. Performance Testing					
74:36:11:01	Stack performance testing or other testing methods	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:11:02	Secretary may require performance tests	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the**	

				Federal Register]	
74:36:11:03	Notice to department of performance test	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:11:04	Testing new fuels or raw materials	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:12. Control of Visible Emissions					
74:36:12:01	Restrictions on visible emissions	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
* * * * * * *					
74:36:12:03	Exceptions granted to alfalfa pelletizers or dehydrators	11/25/2019	**[insert date 30 days after date of publication in the**	**[insert Federal Register citation], [insert date of publication in the**	

			Federal Register]	**Federal Register]**	
74:36:13. Continuous Emission Monitoring Systems					
* * * * * * *					
74:36:13:02	Minimum performance specifications for all continuous emission monitoring systems	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
74:36:13:03	Reporting requirements	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
74:36:13:04	Notice to department of exceedance	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
* * * * * * *					
74:36:13:06	Compliance certification	11/25/2019	**[insert date 30 days after date of publication in the**	**[insert Federal Register citation]**, **[insert date of publicatio**	

			Federal Register]	**n in the Federal Register]**	
74:36:13:07	Credible evidence	11/25/2019	**[insert date 30 days after date of publicati on in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publicatio n in the Federal Register]**	
* * * * * * *					
74:36:18. Regulations for State Facilities in the Rapid City Area					
* * * * * * *					
74:36:18:10	Visible emission limit for construction and continuous operation activities	11/25/2019	**[insert date 30 days after date of publicati on in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publicatio n in the Federal Register]**	
* * * * * * *					
74:36:20. Construction Permits for New Sources or Modifications					
* * * * * * *					
74:36:20:05	Standard for issuance of construction permit	11/25/2019	**[insert date 30 days after date of publicati on in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publicatio n in the Federal Register]**	
* * * * * * *					

74:36:21. Regional Haze Program					
* * * * * * *					
74:36:21:02	Definitions	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
* * * * * * *					
74:36:21:04	Visibility impact analysis	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
74:36:21:05	BART determination	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation], [insert date of publication in the Federal Register]**	
* * * * * * *					
74:36:21:09	Monitoring, recordkeeping, and reporting	11/25/2019	**[insert date 30 days after date of publication in the**	**[insert Federal Register citation], [insert date of publication in the**	

			Federal Register]	**Federal Register]**	
* * * * * * *					
74:36:21:13	Calculate a 30-day rolling average	11/25/2019	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	
* *	* *	* *	*		

* * * * *

(e) * * *

Rule title	**State effective date**	**EPA effective date**	**Final rule citation, date**	**Comments**
* * * * * * *				
XXVI. Section 110(a)(2) Infrastructure Requirements for the 2015 8-hour Ozone NAAQS	01/15/2020	**[insert date 30 days after date of publication in the Federal Register]**	**[insert Federal Register citation]**, **[insert date of publication in the Federal Register]**	

[FR Doc. 2020-21474 Filed: 10/23/2020 8:45 am; Publication Date: 10/26/2020]